IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.203 of 2007

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's orders

Smt. M.S. Jawalkar, Advocate for Petitioner.
Shri A.P. Tathod, Advocate for Respondent No.1.

Coram : R.C. Chavan, J.
Dated : 11th June, 2007

1. This petition is an illustration as to why people do not venture into Civil Courts because of proverbial delays. Suits filed 21 years ago have been held up by filing this petition challenging the valuation of the suits for the purpose of court fees and jurisdiction in the year 2007 in a second round of the parties coming to the High Court.

2. The petitioner, one of the defendants in one of those 35 suits, states that the property, which is the subject-matter of the dispute, is worth Rs.420/- per square foot according to the Government Valuer's report, though the market value may be still high, and, therefore, wanted the suits to be valued accordingly at the rate of Rs.420/- per square foot. Clause (v) of Section 6 of the Bombay Court-fees Act, 1959 reads as under :

> "(v) In suits for the possession of land, houses and gardens—according to the value of the subject-matter; and such value shall be deemed to be, where the subject-matter is a house or garden—according to the market value of the house or garden and where the subject-matter is land, and--
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> (a) where the land is held on settlement for a period not exceeding thirty years and pays the full assessment to Government—a sum equal to forty times the survey assessment;
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> (b) where the land is held on a permanent settlement, or on a settlement for any period exceeding thirty years, and pays the full assessment to Government—a sum equal to eighty times the survey assessment; and
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> (c) where the whole or any part of the annual survey assessment is remitted—a sum computed under sub-paragraph (a) or sub-paragraph (b), as the case may be, in addition to eighty times, the assessment or, the portion of assessment so remitted."

Since the subject-matter of the suits is land and since it is not shown that the land has to be valued for the purpose of clause (v) of Section 6 of the Act according to its market value, apparently there is nothing wrong with the order passed by the learned Judge.

3. In any case, all these grievances could be duly considered, since this is a disputed question of fact, when the parties go to trial. If the petitioner can point out that the respondent-plaintiff is required to pay a higher amount of court-fee, the Court could make the

decree contingent upon deposit of such court-fee should a decree be passed in favour of the respondent-plaintiff. There was no warrant for the petitioner to rush to this Court for an adjudication on the valuation of the property, which would require evidence to be taken, if the petitioner's contention that the suit has to be valued according to the market value, is to be accepted. The question of valuation has nothing to do with the substantive defences that the petitioner may have to respondent's claim for recovery of possession.

4. The Legislature has time and again frowned upon litigants' attempt to interdict trials and rush to higher Court against the interim order. In spite of this, the rush to this Court is unabated. The apprehension, if any, the petitioner may have on account of jurisdiction can also be duly taken care of, because the suit has been instituted in the Court of Civil Judge, Senior Division, who has no fetters on his jurisdiction as far as the valuation is concerned. In view of this, since the petition is thoroughly meritless, it is dismissed, but with the following directions :

5. (a) The learned Trial Judge shall duly consider the petitioner's objection to valuation of suit and shall duly deal with such objection while deciding the suit and should any deficit court-fee be found recoverable from the respondent-plaintiff, order it to be recovered as a pre-condition for passage of the decree.

(b) The learned District Judge, Nagpur shall assign these suits for trial to one of the Civil Judges, Senior Division, Nagpur, so that the apprehension, if any, of the petitioner about the suit being beyond the pecuniary jurisdiction of the Civil Judge, Junior Division, is also duly taken care of.

(c) The Judge, to whom the trial is assigned, shall make endeavour to dispose of all the 35 suits within six months from the date of their assignment and the learned District Judge shall ensure that the learned Judge to whom such trials are assigned is not overburdened with other work so that these 21 years' old suits can be disposed of within the period prescribed.

(d) The learned Trial Judge shall ordinarily hear the suits on day-to-day basis and avoid any adjournment except on account of death and sickness of the parties.

(e) Since the suits are 21 years' old, in the eventuality of necessity of bringing the legal representatives in any of the suits, the trial of other suits shall not be held up and the same shall be disposed of within the time given.

6. The Registry shall transmit a copy of this order to the Registrar (Inspection), High Court of Bombay, Mumbai, who shall monitor the progress of the suits.

Judge

pdl